IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 72 of 2002

in

SPECIAL CIVIL APPLICATIONNo 11308 of 2001

With

Civil Application No. 1300 of 2002.

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

MAYURKUMAR I SHAHERWALA

Appearance:

MR HS MUNSHAW for the Appellant.

Respondent as PARTY-IN-PERSON.

CORAM : MR.JUSTICE J.N.BHATT
and

MR.JUSTICE KUNDAN SINGH

Date of decision: 08/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

The appellant Gujarat State Road Transport Corporation Ltd. (GSRTC) has assailed the award of the Labour Court granting reinstatement to the respondent workman and confirmed by the learned Single Judge in writ petition by order, dated 7.1.2002 by invoking the aids of the provisions of clause 15 of the Letters Patent.

2. Short skeleton, factual profile relevant and material for the issue in controvery may be at the outset highlighted with a view to appreciate the merits and challenge against the appeal. The respondent was initially appointed as a Clerk in the year 1968 who came to be promoted in the year 1976 as Junior Accountant and thereafter, he came to be promoted in the cadre of Senior Accountant in the year 1996. He came to be transferred from Rajkot to Jhagadia in November, 1997.

3. The appellant Corporation inter alia alleged that the respondent was involved in financial irregularities by way of claiming impermissible medical bills of hs son who was an earning member of his family and also availed the benefit of leave travel concession scheme of his married and earning son and after receipt of confidential report from the Security Officer, Rajkot, a show cause notice came to be issued against the respondent-original workman, followed by a charge-sheet and lateron a ful-fledged departmental inquiry which came to be concluded holding the workman guilty for the charges levelled against him. He was, therefore, dismissed from service by the competent authority by an order dated 4th March, 1999 which came to be questioned before the Labour Court by way of Reference (LC) No. 181 of 1999 with claim and prayer for reinstatement and back wages. The Labour Court, after considering all the facts and circumstances passed the award on 11.5.2001 whereby directed the appellant Corporation to reinstate the respondent work in service with full back wages which was carried furtehr by the Corporation by filing a writ petition in this Court and the learned Single Judge dismissed the petition upholding the award made by the Labour Court in favour of the respondent workman and hence this Letters Patent Appeal by invocation of clause 15 of Letters Patent.

3. Ordinarily, this Court would not investigate or re-examine the factual aspects. There are special circumstances and reasons which we have successfully noticed in course of hearing and at the time of examining and evaluating the evidence produced on record. Before further discussion is made, we would like to place on record one celebrated proposition of law with regard to holding of a departmental inquiry.

4. It is a settled proposition that the departmental proceedings or domestic Tribunal, the evidence recording mechanism cannot be equated with the criminal trial. The process, application of principles of Evidence Act and yardstick of evaluating the evidence before domestic Tribunal or disciplinary authority could not be said to be same as that of a criminal trial. As such, the disciplinary authority in a domestic Tribunal can reach a conclusion on the probability or doctrine of preponderence of probability. Unlike criminal trial, it is very well known that the criminal jurisprudence to which we have wedded for the purpose of adjudication of alleged crime, strict proof and strict adherence to the principles of Evidence Act have been followed. So is not the legal proposition in case of a domestic inquiry or disciplinary proceedings. This vital distinction between the parameters, yardsticks and the extent of evaluating of the evidence between the two, like the criminal trial wherein the charge has to be proved beyond reasonable doubt and charges or imputations against the delinquent in a departmental inquiry could be proved on the doctrine of preponderence of probability has not been successfully appreciated by the Labour Court as well as by the learned Single Judge with due respect.

5. We would like to highlight the following aspects which have remained incontrovertible from the record of the present case.

(1) That the respondent workman was enjoying and occupying the responsible office of a Senior Accountant in the Corporation. It was he who examined, passed and verified the claims made by other employees. In other words, the scrutiny of such bills was first to be done by the Senior Accountant before disbursement of the claim is made which is permissible which is admissible and which is to be recognisable and if such a person inc harge of such a repsonsible office, could indulge in his own case, for committing irregularities, serious view could have been taken by the Labour Court.

6. The medical bill preferred for the son was admittedly not minor. Not only that, he was major

one. One son was engaged in "Rajsattha" weekly publication published from Rajkot. The other son was married and he was engaged in entertainment business as he was giving channel facility on higher basis. Both the sons being adults, one of them being married and busy in work. Obviously, therefore, the Corporation is not expected to lead evidence of exact quantum of income which was within their special knowledge. Apart from the fact that one of them was fined by the Collectorate for some irregularity under Entertainment Tax Act, to the tune of Rs. 85,000/- which is also not disputed. However, the party-in-person while arguing has also drawn our attention to the fact that the said order of imposing fine was revoked as at the relevant time, his son was though doing business and engaged in entertainment work, had only given 17 connections after taking registration in the name of "Partho Video Centre." It was registered on 16.9.1996 and 17 connections were given from disc antenna. The statement prepared by the officer before initiation of the departmental inquiry in connection with the income is, also, seen by us. It appears that this part is not seriously considered and appreciated by the Labour Court.

6. After having taken into consideration overall factual profile and relevant and material proosition of law, with regard to appreciation of evidence and propotionality of punishment in the realm of service jurisprudence, we are of the view that the departmental inquiry conclusions cannot be brushed aside. The final conclusion of the departmental authority holding the respondent-original workman guilty for the charges in the facts and circumstances and aforesaid our discussion, is required to be restored.

7. Now, the, only, question which is left in the field is as to what should be the quantum of punishment. In other words, the issue of proportionality of punishment.

8. After having given our anxious thoughts and considerations to the issue of proportionality of punishment and the submissions made by the party-in-person as well as by the learned advocate for the Corporation and the factum that the respondent workman has worked for the Corporation for more than three decades and the delinquency which is established in this case, is only one in the career and that too, with respect to the total amount of about Rs. 6000/-, of course, he was working as a Senior Account and such an irregularity or delinquency by a responsible person also

is an important factor to be considered. After throwing into scale the relevant and material aspects emerging from the record of the case and after hearing the party-in-person and the learned advocate for the Corporation and the unblemished long career of three decades, we are of the opinion that the order of reinstatement with 50% back wages would satisfy the ends of justice. Therefore, the award of the Labour Court and confirmed by the learned Single Judge in the writ petition shall stand partly modified and it shall stand substituted by our order of reinstatement with 50% back wages only from the date of dismissal till the date of the award. without any order as to costs. The reinstaement is directed within a period of one month from today failing which further appropriate redressal can be sought by the respondent workman. The back wages shall be paid within a period of three months from today. If not paid within three months, the Corporation shall be liable for delay in payment and interest for which it will be open for the respondent workman to move this Court for further directions in this behalf.

Since the Letters Patent Appeal has been disposed of on merits, there shall be no orders on the Civil Application.

(J.N.Bhatt,J)

(Kundan Singh,J)

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